IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Bail Appl..No. 5537 of 2007()

CRIME NO. 521/07 OF VADAKARA POLICE STATION

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PETITIONER

MUHAMMEDALI C.M.,
S/O.ABDULLA, CHERIPPOLIMEETHAL,
MUDAVATHERI P.O.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. C.I. OF POLICE, VADAKARA POLICE STATION.

2. STATE REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5537 of 2007

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Dated this the 13th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. He faces allegations, inter alia, under the provisions of the Immoral Traffic Prevention Act and Section 323 I.P.C. The crux of the allegations is that a helpless woman, whose husband was detained in prison and was finding it difficult to make both ends meet was persuaded to accompany the accused persons to a lodge for the purpose of sexual intercourse for consideration. The first one closeted along with the woman, had sexual intercourse twice, but sneaked out of the room without giving any payment. Then came the next. He also wanted to have sexual intercourse. She resisted. She insisted that there could be no intercourse on credit. Payment had to be made, it was insisted. At this point, the said person, with an intention to subject her to sexual intercourse, is alleged to have assaulted her. The petitioner is allegedly the first person who went into the room. The crime has been registered. Investigation is in progress. Two other accused, who have already been arrested, have been granted regular bail, it is submitted. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. The petitioner does not deserve to suffer the trauma of arrest and incarceration on the basis of the statement of a woman, who on her own showing, does not have very acceptable credentials. Anticipatory bail may, in these circumstances, be granted to the petitioner, it is prayed. The learned counsel further submits that, at any rate, the sections of offence shown are not proper and the petitioner does not deserve to be detained for those allegations.

3. The learned Prosecutor opposes the application. The learned Prosecutor submits that there are no features to justify the invocation of the discretion under Section 438 Cr.P.C. in this case. This is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate and then seek regular bail in the ordinary course.

4. I find merit in the opposition by the learned Prosecutor. I am not embarking on a detailed discussion as to whether the sections of offences shown are correct or not. I look at the nature of the allegations. In the nature of the contentions, the case diary was directed to be placed before me. I have gone through the case diary. In the nature of the allegations

raised, I am not certainly persuaded to agree that the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner. The nature, quality and contours of the jurisdiction must be alertly borne in mind. Such extra ordinary jurisdiction cannot be invoked as a matter of course. The conscience of the court must be satisfied that it is necessary in the interests of justice to invoke such discretion. I am not at all satisfied that this is a fit case where such discretion can be invoked in favour of the petitioner.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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